

March 28, 1946

Honorable Grover A. Giles
Attorney General
State of Utah
B u i l d i n g

Dear Mr. Giles:

Attached to this letter is a proposed Proclamation which the State Engineer will recommend that the Governor sign. Mr. Watson desires that you examine it as to form and invites you to make any suggestions which, in your judgment, are apt.

The power of the Governor to withdraw surplus or unappropriated waters from further appropriation is contained in Section 100-8-1, and the withdrawal must be upon the recommendation of the State Engineer. The purposes for which the water may be withdrawn are there outlined and in general permit the withdrawal for use "by irrigation districts and organized agricultural water users or for any use whatsoever when, in the judgment of the Governor and the State Engineer the welfare of the state demands it".

This particular area, known as the Beryl District, has sufficient water filings now pending in this office to more than take all the unappropriated water in the District if the filings are completed. It seems advisable to withdraw all the surplus waters until such time as it can be determined how many of the pending applications are finally completed. Further, what little surplus water there is above the existing applications, which very likely will be completed, is certainly necessary for future domestic and stock watering uses. It is thought to be for the best welfare of the state to reserve this water for domestic and stock watering purposes and to withdraw the water for all other purposes.

The authority of the Governor to withdraw water for one purpose while permitting appropriations for other purposes may be somewhat doubtful. I can find no precedent for it. Apparently the matter has never been before the Utah Courts but it would seem to me that since the Governor has the authority to withdraw the water for all purposes he necessarily has the authority to withdraw it for limited purposes. The case of Tanner vs Bacon in 103- Utah 494 and 136 Pac 2d 957, shows how far the Supreme Court has gone in preserving the unappropriated water for future contemplated uses.